

123 FERC ¶ 61,186
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

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|---|---------------------------|
| Carthage Energy, LLC, | Docket Nos. ER99-2541-009 |
| Central Maine Power Company | ER05-731-003 |
| Energetix, Inc., | ER97-3556-017 |
| Hartford Steam Company | ER04-582-007 |
| New York State Electric & Gas Corporation | ER99-221-012 |
| NYSEG Solutions, Inc., | ER99-220-014 |
| PEI Power II, LLC, and | ER97-3553-005 |
| Rochester Gas and Electric Corporation | |

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS
AND ORDER NO. 697 COMPLIANCE FILING

(Issued May 19, 2008)

1. In this order, the Commission accepts Energy East Affiliates'¹ updated market power analysis. As discussed below, the Commission concludes that Energy East Affiliates satisfy the Commission's standards for market-based rate authority. The Commission also accepts Energy East Affiliates' proposed market-based rate tariff revisions to incorporate provisions as adopted in Order No. 697.²

¹The Energy East Corporation (Energy East) Affiliates are Carthage Energy, LLC (Carthage), Central Maine Power Co. (Central Maine), Energetix, Inc. (Energetix), Hartford Steam Co. (Hartford Steam), New York State Electric & Gas Corp. (NYSEG), NYSEG Solutions, Inc. (NSI), PEI Power II, LLC (PEI Power), and Rochester Gas and Electric Corp. (RG&E).

²*Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 914-918, *clarified*, 121 FERC ¶ 61,260 (2007) (Order Clarifying Final Rule), *order on reh'g*, Order No. 697-A, FERC Stats & Regs. ¶ 31,268 (2008).

2. Additionally, as discussed below, Energy East Affiliates meet the criteria for a Category 2 seller and are so designated. Energy East Affiliates' next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.³

I. Background

3. On January 14, 2008, Energy East Affiliates filed an updated market power analysis in accordance with the regional schedule adopted in Order No. 697.⁴ Energy East Affiliates also filed proposed revisions to the market-based rate tariffs to comply with Order No. 697. Energy East Affiliates state that Energy East is a public utility holding company organized under the laws of the state of New York.

A. Energy East Affiliates

4. Energy East Affiliates state that Carthage owns and operates a 56 megawatt (MW) generating facility in the New York Independent System Operator, Inc. (NYISO) market.⁵

5. Energy East Affiliates explain that Central Maine is an electric transmission and distribution company, whose service territory is in the southern, western, and central regions of the state of Maine.⁶ They explain that Central Maine no longer owns generating assets but retains some power entitlements under: (1) long-term contracts with non-utility generators; (2) a power purchase contract with Vermont Yankee Nuclear

³ *Id.* P 882-893, App. D; Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 9, 10, App. D-1.

⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 882. The Commission stated that "both the Commission and market participants will benefit from greater data consistency that will result from regional examination of updated market power analyses and a methodical study of all sellers in the same region. This will give the Commission a more complete view of market forces in each region and the opportunity to reconcile conflicting submissions, enhancing our ability to ensure that sellers' rates remain just and reasonable." *See also* Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 13.

⁵ Carthage was authorized to sell electric energy and capacity at wholesale at market-based rates in *Cleco Trading & Marketing, LLC*, 87 FERC ¶ 61,311 (1999) (letter order).

⁶ Central Maine was authorized to sell electric energy and capacity at wholesale at market-based rates in *Carthage Energy, LLC*, 111 FERC ¶ 61,240 (2005).

Power Corp., which purchases from Entergy Nuclear Vermont Yankee, LLC; and (3) long-term contracts with other market entities. Energy East Affiliates state that Central Maine sells its power entitlements for periods ranging from one to three years under auctions approved by the Maine Public Utility Commission. They also state that Central Maine, along with its subsidiary, Maine Electric Power Company, Inc. (Maine Electric),⁷ has an ownership interest in and operates a 345 kV bulk transmission network in Maine. Central Maine also owns and operates all lower voltage transmission in its service territory, and has turned operational control over its transmission system to ISO-NE.

6. Energy East Affiliates state that Energetix is an energy service company marketing electricity and natural gas to retail and wholesale customers in the Northeast.⁸ They state that Energetix does not own or control any generation capacity.

7. Energy East Affiliates state that Hartford Steam owns and operates a 7.6 MW cogeneration facility in the ISO-NE market.⁹ They state that currently, all of the excess energy produced by the facility is committed for sale to a third party under a long-term contract that expires on December 23, 2008.

8. Energy East Affiliates explain that NYSEG is an electric and natural gas distribution company in New York, whose electric and gas service territories are in the central, eastern and western parts of the State of New York.¹⁰ They further explain that the NYSEG territories do not include the constrained areas in New York City and Long Island. They state that NYSEG sold a majority of its generation assets in 1999 and most of its remaining generation assets in 2001. Energy East Affiliates further state that

⁷ Energy East Affiliates state that Maine Electric's sole asset is a 182-mile, 345 kilovolt (kV) transmission line connecting Maine and New Brunswick Power. This is one of only two transmission interconnects in the Maritimes Control Area to the north in Atlantic Canada and Maine and the ISO New England Inc. (ISO-NE) to the south in New England. Maine Electric has ceded operational control over its transmission system to ISO-NE.

⁸ Energetix was authorized to sell electric energy and capacity at wholesale at market-based rates in *Rochester Gas & Elec. Corp.*, 80 FERC ¶ 61,284 (1997) (*RG&E*).

⁹ Hartford Steam was authorized to sell electric energy and capacity at wholesale at market-based rates in *Hartford Steam Co.*, Docket No. ER04-582-000 (Sept. 10, 2004) (unpublished letter order).

¹⁰ NYSEG was authorized to sell electric energy and capacity at wholesale at market-based rates in *New York State Elec. and Gas Corp.*, 85 FERC ¶ 61,342 (1998) (*NYSEG*).

NYSEG currently owns approximately 70 MWs of generation, consisting primarily of hydroelectric facilities, and it has power-purchase contracts from third-parties. NYSEG's transmission facilities are operated by the NYISO, and its transmission service is subject to an Open Access Transmission Tariff (OATT). NYSEG also owns the Seneca Lake Natural Gas Storage Facility, which is located in New York.

9. Energy East Affiliates state that NSI is an energy service company marketing electricity and natural gas to retail and wholesale customers in the Northeast.¹¹ NSI does not own or control any generation capacity.

10. Energy East Affiliates state that PEI Power, which is 50.1 percent owned by Energy Network, Inc. (Energy Network), a wholly-owned subsidiary of Energy East, owns a 43.7 MW gas turbine generation facility in Archbald, Pennsylvania, in the PJM Interconnection, L.L.C. (PJM) market.¹² Energy East Affiliates also state that Energy Network manages fuel procurement and electricity sales from the generating facility.

11. Energy East Affiliates explain that RG&E is an electric and natural gas distribution company in New York, whose electric and gas service territories are in the region centering around the City of Rochester in upstate New York.¹³ They state that RG&E currently owns 375 MWs of generation, of which 236 MWs (the Russell facility) are scheduled to be shut down and off-line from May 2008 to at least 2013. RG&E also has power purchase agreements for energy and capacity from third-parties. Energy East Affiliates state that RG&E's transmission facilities are operated by NYISO, and its transmission service is subject to an OATT.

B. Other Affiliated Companies

12. Energy East Affiliates explain that they are affiliated with several intrastate gas operating companies that primarily sell and distribute natural gas at retail. Energy East Affiliates state that Berkshire Gas Company is a local natural gas distribution company that delivers natural gas to customers in western Massachusetts. Energy East Affiliates state that Connecticut Natural Corporation delivers natural gas to residential, commercial,

¹¹ NSI was authorized to sell electric energy and capacity at wholesale at market-based rates in *NYSEG*, 85 FERC ¶ 61,342.

¹² PEI Power was authorized to sell electric energy and capacity at wholesale at market-based rates in *PEI Power II, LLC*, Docket No. ER01-1764-000 (June 7, 2001) (unpublished letter order).

¹³ RG&E was authorized to sell electric energy and capacity at wholesale at market-based rates in *RG&E*, 80 FERC ¶ 61,284.

and industrial customers in central Connecticut. Energy East Affiliates also state that Southern Connecticut Gas Company delivers natural gas to residential, commercial, and industrial customers in southern Connecticut. They state that Maine Natural Gas Corporation distributes natural gas to customers throughout Maine.

13. In addition, Energy East Affiliates state that Iberdrola, S.A. (Iberdrola) plans to acquire 100 percent of Energy East.¹⁴ They explain that the only public utility affiliates of Iberdrola in the United States are non-transmission-owning generation project companies and marketers with market-based rate authority. They state that Iberdrola is not affiliated with any franchised public utility and holds only *de minimis* generation interests in the geographic markets where Energy East operates.

II. Notice and Responsive Pleadings

14. Notice of Energy East Affiliates' filing was published in the *Federal Register*, 73 Fed. Reg. 5542 (2008), with interventions and protests due on or before February 4, 2008. Exelon Corporation (Exelon) filed a timely motion to intervene.

III. Discussion

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motion to intervene serves to make Exelon a party to this proceeding.

A. Market-Based Rate Authorization

16. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹⁵ As discussed below, the Commission concludes that Energy East Affiliates satisfy the Commission's standards for market-based rate authority.

¹⁴ On December 6, 2007, the Commission granted authorization for the disposition of jurisdictional facilities resulting from the merger transaction in *Energy East Corp.*, 121 FERC ¶ 61,236 (2007). Energy East Affiliates state that they will make a change in status filing within 30 days of the consummation of the transaction.

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

1. Horizontal Market Power

17. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.¹⁶

18. Energy East Affiliates have prepared the pivotal supplier and wholesale market share screens for the NYISO, ISO-NE, and PJM markets, consistent with the requirements of Order No. 697.¹⁷ For both the pivotal supplier and wholesale market share screens, Energy East Affiliates do not provide a simultaneous import limitation (SIL) study, but rather made a simplifying conservative assumption by including all affiliate supply from the first-tier balancing authority areas, without considering competing imports.

19. The Commission has reviewed Energy East Affiliates' pivotal supplier screen and wholesale market share screen and has determined that Energy East Affiliates pass the pivotal supplier screen and the wholesale market share screen in the NYISO, ISO-NE, and PJM markets.¹⁸ The Commission does not require a SIL study when the applicant can demonstrate that it passes the screen for each relevant geographic market without considering imports.¹⁹ Accordingly, the Commission finds that Energy East Affiliates satisfy the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

20. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file before granting a seller market-based rate authorization.²⁰

21. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²¹ The Commission requires a seller to provide

¹⁶ *Id.* P 62.

¹⁷ *Id.* P 235.

¹⁸ Using the conservative assumption of no imports, the market share ranges for NYISO, ISO-NE, and PJM are 9.54 to 14.23 percent, 9.56 to 14.96 percent, and 1.87 to 3.0 percent, respectively.

¹⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 379.

²⁰ *Id.* P 408.

a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; and sites for generation capacity development; sources of coal supplies and equipment for the transportation of coal supplies such as barges and rail cars (collectively, inputs to electric power production).²² The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²³

22. Energy East Affiliates state that the transmission-owning entities (NYSEG and RG&E in NYISO, and Central Maine in ISO-NE) provide transmission service pursuant to an OATT filed by the balancing authority to whom they have ceded control of their transmission facilities. Specifically, NYSEG and RG&E provide transmission service and collect wholesale transmission charges pursuant to the Commission-approved NYISO OATT and have ceded operational control of their transmission facilities to the NYISO.²⁴ Similarly, Central Maine provides transmission service and collects transmission charges pursuant to the Commission-approved ISO-NE OATT and has ceded operational control of its transmission facilities to the ISO-NE.²⁵

23. With regard to barriers other than transmission, Energy East Affiliates state that they are not affiliated with any interstate natural gas pipelines, and none of them own sources of coal supplies or facilities for the transportation of coal supplies. They further state that they have not erected, and will not erect, barriers to entry into the NYISO, ISO-NE, or PJM markets.

24. The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production

²¹ *Id.* P 440.

²² *Id.* P 447. In Order No. 697-A, the Commission revised the definition of inputs to electric power production to include “physical coal supply sources and ownership of or control over who may access transportation of coal supplies.” Order No. 697-A, FERC ¶¶ Stats & Regs ¶ 31,268 at P 176.

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁴ *See Central Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062 (1999).

²⁵ *See New England Power Pool*, 83 FERC ¶ 61,145 (1998).

does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.²⁶

25. Finally, Energy East Affiliates state that, while certain Energy East Affiliates own sites for generation capacity development at their existing generators, and while Central Maine has an interest in certain decommissioned nuclear plants, Energy East Affiliates do not own the only viable sites for generation capacity development such that any of them may erect barriers to entry.

26. Based on Energy East Affiliates' representations, their submittal satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Order No. 697 Compliance Filing

27. In Order No. 697, the Commission adopted two standard required provisions that each seller must include in its market-based rate tariff: a provision requiring compliance with the Commission's regulations and a provision identifying any limitations and exemptions regarding the seller's market-based rate authority.²⁷ In addition to the required tariff provisions, the Commission adopted a set of standard provisions that must be included in a seller's market-based rate tariff to the extent that they are applicable.²⁸

28. We find that Energy East Affiliates' revised market-based rate tariffs include the Commission's two standard required provisions and a set of standard provisions with regard to sales of certain ancillary services in PJM, NYISO, ISO-NE, and California Independent System Operator. Therefore, the Energy East Affiliates' revised market-based rate tariffs satisfy the Commission's requirements set forth in Order No. 697.

29. Energy East Affiliates also include an asset appendix, as required by Order No. 697²⁹ that identifies generation assets owned and controlled by Energy East Affiliates. Accordingly, we will accept Energy East Affiliates' revised market-based rate tariffs, effective September 18, 2007, as requested.³⁰

²⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

²⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914.

²⁸ *Id.* P 917.

²⁹ *Id.* P 894-895.

³⁰ Carthage Energy, LLC, FERC Electric Tariff, Third Revised Volume No. 1, Substitute Original Sheet No. 1(Supersedes Second Revised Volume No. 1). Central Maine Power Company, FERC Electric Tariff, First Revised Volume No. 5, Substitute (continued...)

C. Reporting Requirements

30. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.³¹ Public utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.³²

Original Sheet No. 1 (Supersedes Original Volume No. 5). Energetix, Inc. Fourth Revised Rate Schedule FERC No. 1, Substitute Original Sheet No. 1 (Supersedes Third Revised Rate Schedule). Hartford Steam Company, First Revised Rate Schedule FERC No. 1, Substitute Original Sheet Nos. 1-2 (Supersedes Rate Schedule FERC No. 1). New York State Electric & Gas Corporation, FERC Electric Tariff, Original Volume No. 3, Substitute Second Revised Sheet No. 1a (Supersedes First Revised Sheet No. 1a), Substitute First Revised Sheet no. 3 (Supersedes Original Sheet No. 3). NYSEG Solutions, Inc., Second Revised Rate Schedule FERC No. 1, Substitute Original Sheet No. 1 (Supersedes Rate Schedule FERC No. 1, Revision No. 1). PEI Power II, LLC, FERC Electric Tariff, First Revised Volume No. 1, Substitute Original Sheet Nos. 1-2 (Supersedes Original Volume No. 1). Rochester Gas and Electric Corporation, FERC Electric Tariff, Second Revised Volume No. 3, Substitute First Revised Sheet No. 7 (Supersedes Original Sheet No. 7)

³¹ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Report to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

³² The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2007). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

31. Energy East Affiliates must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.³³

32. Additionally, in Order No. 697, the Commission created two categories of sellers.³⁴ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements for Order No. 888); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.³⁵ Sellers that do not fall into Category 1 are designated as Category 2 and are required to file regularly scheduled updated market power analyses.³⁶

33. Based on Energy East Affiliates' representations, we find that they meet the criteria for a Category 2 seller, based on their ownership of generation totaling greater than 500 MWs of capacity and because their affiliates, NYSEG and RG&E, own transmission in the NYISO market, and Central Maine owns transmission in the ISO-NE market. Thus, Energy East Affiliates must file an updated market power analysis in compliance with the regional reporting schedule adopted in Order No. 697.³⁷ The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Energy East Affiliates' updated market power analysis is hereby accepted for filing.

³³ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42.

³⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

³⁵ 18 C.F.R. § 35.36(a)(2).

³⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

³⁷ *Id.* P 882.

(B) Carthage's, Central Maine's, Energetix's, Hartford Steam's, NYSEG's, NSI's, PEI Power's, and RG&E's revisions to their market-based rate tariff sheets are hereby accepted for filing, effective September 18, 2007, as requested, as discussed in the body of this order.

(C) Energy East Affiliates are hereby directed to file an updated market analysis according to the regional reporting schedule adopted in Order No. 697.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.